Pipelines in Alberta

What farmers need to know

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Introduction

What Farmers Need to Know

This publication provides you, the surface owner or occupant, with a synopsis of the procedures and regulations you may encounter if an energy company constructs and installs a pipeline on your privately owned or leased land.

In recent years, many farmers and ranchers have contacted the Office of the Farmers' Advocate to request pipeline information unavailable from a single source. This publication, although it doesn't cover every possible situation, can be used as a general guide. It touches on the major areas of concern and can easily be read in 20 minutes.

If you require more information or clarification, you should contact one of the agencies listed on page 7.

Overview of the Life of a Pipeline Project

- An energy company conducts an initial assessment of pipeline route, in consultation with landowners and government departments.
- The landowner is contacted by the company to obtain consent for the proposed pipeline location.
- Once the pipeline location is established, the landowner and company negotiate a pipeline easement or right-of-way agreement.
- The company registers a caveat on the landowner's land title.
- The company obtains government approvals.
- Compensation is paid.
- Pipeline construction begins.
- If problems arise during or after pipeline construction, there are several agencies that may be able to help. Alberta Environment (AE) should be contacted about conservation and reclamation issues. The Energy Resources Conservation Board (ERCB) should be contacted for technical and safety concerns. (See the contact list at the end of this publication.)
- Generally, one crop year after installation of a pipeline the company and landowner settle any damage claims.
- The company retains the right, under the right-of-way or easement agreement, for re-entry to inspect or repair the pipeline.
- The company is responsible for surface damage on or off the right-of-way.
- Once the company stops using the pipeline, it may apply to the ERCB to abandon the pipeline. The company may then apply to Alberta Environment for a reclamation certificate.

- The energy company's caveat should then be removed from the landowner title.
- If the landowner requires the removal of the pipeline they can apply to the ERCB. The ERCB determines, depending on the information provided, if the line is creating an adverse effect for the landowner. If so, the company may be required to remove and/or relocate the line.

Negotiating for a Right-of-Way Agreement

As of January 1, 1977, the *Surface Rights Act* grants pipeline and utility companies the right to gain entry on to lands to lay down and construct pipelines, power lines and telephone lines. Granting a right-of-way means conveyance of limited specified rights; the grantor remains the owner and retains all rights not yielded to the grantee. A right-of-way agreement, most commonly used to legally secure access for pipelines, is negotiated and registered against title by way of caveat.

The negotiations concerning a right-of-way agreement involve three major issues: the nature of the rights that will be granted, the compensation payable for these rights, and the provisions concerning liability and compensation for damages arising from the exercise of the rights granted. The company will approach the landowner with an agreement and an attached plan of survey. The agreement, drafted by the company, is drawn up to enable and protect the company's operations and installations. Agreements can vary greatly. Many clauses are broadly written to cover things that might occur. It should be studied carefully and signed only when the intent of each clause is understood. Moreover, the company has drawn up the agreement with *its* operation in mind. The landowner should negotiate amendments or additional clauses that apply to *his* circumstances and protect *his* interests.

If the landowner and company cannot agree on location, the company can ask the ERCB to provide dispute resolution. This may be as simple as involving the local ERCB inspector, or as complex as a hearing before the ERCB. Prior to issuing the permit, the ERCB takes into account the concerns of the landowner, as well as the requirements of the company. If the dispute involves compensation, the company, after acquiring a permit, may apply to the Surface Rights Board (SRB) for a Right-of-Entry Order.

The following are matters that form part of right-of-way agreements and cover areas for discussion with the company.

Rights of the Landowner

Location of Pipeline

The pipeline route will be surveyed and a Plan of Survey completed. The plan must be attached to the Right-of- Way Agreement. Surveyors have the right to undenied access to the land through both Section 14 of the *Surface Rights Act* and Section 16 of the *Surveys Act*. An operator or his agent should make a reasonable attempt to notify you prior to the survey. They are also liable for any damage caused by the survey.

The pipeline route chosen by the company is not cast in stone. If you have a concern with the route chosen, suggest an alternative route when you're asked to sign the consent of location form. If you and the company are unable to negotiate a satisfactory location, you have the right to request a review by the ERCB for dispute resolution. Contact your nearest ERCB field office.

Right-of-Entry

If you and the company cannot agree on compensation the company may apply to the SRB for a Right-of-Entry. If the SRB grants the company this order, the company has the legal right to come onto the land to install and operate the pipeline. Prior to commencing construction, the company must pay you 80 per cent of their offer. Any additional compensation, in an amount determined by the SRB, is payable following the hearing.

If both parties reach a settlement prior to the SRB hearing, a private right of way agreement can still be signed and the hearing cancelled.

Temporary Workspace

It is sometimes necessary for the company to acquire temporary workspace adjacent to the right-of-way. Compensation for temporary access is negotiable. The landowner may request that all required workspace be included in the right-of-way agreement and not as part of a separate temporary access agreement. In addition to any other negotiated compensation, the landowner is entitled to be compensated for damages. Temporary workspace is included in the right-of-way when the company applies for a Reclamation Certificate.

Topsoil, Compaction and Weeds

The agreement should specify conditions for removal or non-removal of topsoil, leaving the land as near as possible to its original condition following construction. Alberta Environment has established criteria for handling topsoil. These criteria must be followed.

As many vehicles and heavy equipment will be travelling on your land during the pipeline construction, you should discuss procedures to be taken by the operator to strip and conserve topsoil on the right-of-way.

You may also wish to discuss the company's practice for the prevention of spreading weeds from one area to another.

Additional Pipelines

Some agreements contain clauses relating to the construction of additional pipelines. This allows the company the right to place additional pipelines in the right-of-way. In this type of agreement, prior to construction of the additional line, the company must pay the appreciated difference in the land value of the area used or a minimum of $50 per acre. An entry fee would not be payable, damages would be payable.

The intent of the granting clause in the most commonly used right-of-way agreement today is that only one construction operation would be allowed on a right-of-way. During this one construction operations more than one pipeline may be installed. You may request that the easement be limited to one pipeline by adding a clause similar to the following: "This right-of-way agreement is for the construction and laying of one (1) pipeline." Should the company come back and request an additional pipeline, it would have to negotiate a separate right-of-way agreement.

For more information about your specific situation, contact the Farmers' Advocate Office.

Pipeline Removal

You may negotiate to have the pipeline removed upon abandonment. This request must be included in the agreement at the time of signing. If a request is made at a later date, the company is not obliged to agree. At the landowner's request, the ERCB can review a company's pipeline license, to determine if the pipeline causes an adverse effect and should be relocated or removed.

Above Ground Structures

Under the *Surface Rights Act*, above ground structures (appurtenances) relating to the pipeline require a separate agreement, a surface lease.

Other Concerns

Other concerns you may have can be addressed and, if necessary, added to the agreement with the company or to a separate letter of intent signed by the company.

Compensation

Under Alberta legislation, landowners and occupants of land are entitled to receive compensation for allowing a pipeline to be installed on their land. The categories of compensation for a right-of-way include the following:

- **entry fee** – $500 per acre, for each acre of land in the easement or right-of-way agreement; minimum $250, maximum $5,000.
- **value of land rights taken** – value to body of rights impacted by pipeline right-of-way.
- **general disturbance** – compensation for the time involved in negotiating the right-of-way agreement and other inconveniences related to the installation of the pipeline. It is common to lump the value of the land and general disturbance together.
- **damages** – compensation for loss of crop or pasture and adverse effect such as having to farm around an open pipeline trench or relocate livestock.

The entry fee and compensation for the value of the land must be paid before the company installs the pipeline.

Compensation for damages, which may include nuisance and inconvenience, is usually paid one crop season after installation so that the extent of damages can be properly assessed.

The company requires a release from the landowner or occupant relating to the settlement of damages on or off the pipeline right-of-way.

Compensation is also paid when water or sewage pipelines, power transmission lines or telephone lines are installed on your land. To make rural gas distribution affordable, rural gas utilities are not required to pay right-of-entry compensation. Customarily, rural landowners allow gas distribution lines on their property for a nominal one-dollar fee and payment of crop damages.

Leased Land

Private Land

A Right-of-Way Agreement or Right-of-Entry must be completed before the company installs the pipeline. The company must also obtain the consent of the occupant or lessee once the landowner has consented.

The landowner is entitled to receive the entry fee and compensation for the value of land. The occupant is generally entitled to receive compensation for damages and may also be entitled to a portion of the nuisance and inconvenience compensation. The amount of compensation each person is to receive is negotiated between the landowner and the occupant. In the case of a right-of-entry, the SRB determines compensation payable to the landowner and occupant.

Crown Land

Whether the occupant of Crown land can receive compensation depends on the type of legal agreement between the Crown and the occupant.

Crown grazing lessees must give their consent before a pipeline can be installed on the leased land. The grazing lessee is entitled to receive compensation for general disturbance as well as damages. Entry fee and compensation for the value of land are not paid on Crown land.

How to Resolve Common Problems

Most pipelines are installed and operated in Alberta without the landowner experiencing problems. Should a problem arise with the pipeline, it is likely to occur immediately after the construction period, or within two years of installation. Here are some suggestions on how you can resolve a problem, if one arises.

Clean-up of Right-of-Way

If the pipeline right-of-way has not been properly cleared of construction debris or if the topsoil has not been redistributed, levelled, cultivated or reseeded, write or call the company and raise your concerns with them. If the problem is not resolved satisfactorily, get in touch with Alberta Environment or the Farmers' Advocate. The Farmers' Advocate will provide information that may help resolve your concerns. If necessary, we may coordinate and conduct an on-site investigation with the parties involved. AE reclamation officers have the legal authority to order the company to correct problems. (See the contact list at the end of this publication.)

Damage Disputes

Disputes about damages that have occurred on a right-of-way made by private agreement will not be considered by the Surface Rights Board, but most agreements contain an arbitration clause that permits disputes to be settled without litigation. The standard agreement requires three arbitrators, whereby the decision of any two is binding. This clause could be simplified by requiring arbitration as per the *Alberta Arbitration Act*. This would mean only one arbitrator would be required. The process would be simpler and less costly.

Damages off the right-of-way that do not exceed $25,000 and are identified within two years of the occurrence can be brought before the Surface Rights Board for consideration.

Pipeline Trench Sinking

If following completion of the pipeline project, the soil begins to sink or if there is soil compaction in the right-of-way, bring the problem to the attention of the company. If the soil is not properly restored, contact Alberta Environment or the Farmers' Advocate for assistance. If you lose the use of a portion of your land for a period of time because of the problems, the company should compensate you.

Drainage Problems

If the natural drainage pattern is altered, creating a problem on your land, contact the company directly to have the problem corrected. If you are unsuccessful with the company, seek the help of the other agencies.

Exposed Pipelines

If the pipeline becomes exposed, or a portion of the pipe is close to the surface, contact the company immediately. Also contact the ERCB. It will ensure the required corrective work is completed.

Moving Livestock

If you need to move your livestock to another location during the pipeline installation, you are entitled to compensation for the costs and time involved in caring for and moving the livestock. Concerns regarding livestock should be discussed with the company representative prior to construction.

Pipeline Spills or Leaks

Any spills or leaks from a pipeline should be reported to the company immediately. Also, inform the ERCB and Alberta Environment's pollution emergency response team if there is a major spill or leak.

Environment Emergency Response
(24 hours) Ph: 1-800-222-6514

You are entitled to be compensated for any losses or property damage resulting from a spill or leak. Contact the Farmers' Advocate if you need assistance.

For More Information

Energy Resources Conservation Board (ERCB)
640 - 5 Ave SW
Calgary AB T2P 3G4
Ph: 403-297-8311

ERCB Field Centres (24-hour service)

Bonnyville	780-826-5352
Drayton Valley	780-542-5182
Grande Prairie	780-538-5138
High Level	780-926-5399
Medicine Hat	403-527-3385
Midnapore	403-297-8303
Red Deer	403-340-5454
St. Albert	780-460-3800
Wainwright	780-842-7570

Surface Rights Board
10020 - 101 A Ave
18th Floor, Phipps-McKinnon Building
Edmonton AB T5J 3G2
Ph: 780-427-2444

Farmers' Advocate of Alberta
305, 7000 - 113 St
J.G. O'Donoghue Building Edmonton AB
T6H 5T6
Ph: 780-427-2433
Fax: 780-427-3913
www.farmersadvocate.gov.ab.ca

Other Related Information Sources

Available from:

Alberta Agriculture Publications Office
7000 - 113 Street
Edmonton, AB T6H 5T6

or

Farmers' Advocate Office:
- Negotiating Surface Rights (Agdex No. 878-1)
- Seismic Operations & Farmers Rights (Agdex No. 878-2)
- Leasing Mineral Rights (Agdex No 878-3)

Publications Available from Energy Resources Conservation Board:
- EnerFAQs 1 What is the Alberta Energy and Utilities Board
- EnerFAQs 8 Proposed Oil and Gas Development: A Landowners Guide
- EnerFAQs 5 Explaining ERCB Setbacks
- EnerFAQs 7 Electricity and the ERCB

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